court denied recovery in tort, on the grounds that there was abundant scope for the operation of the clause in the charter without interfering with the principle that a charitable organization could not be sued in tort.

COMMON CARRIERS—APPLICATION OF HOURS OF SERVICE ACT TO EMPLOYEES OF TERMINAL CO.—Does the Hours of Service Act apply to a Terminal Company, operating a union freight station under contracts with ten railroads and several steamship companies; owning freight sheds and yards and connecting tracks, also tugs and car floats, but no cars; leasing two switching engines and employing crews, but carrying no passengers, and receiving goods only as agent of the railroads and steamship lines? *Held,* that such a company was a common carrier within the meaning of the Act, thus reversing 239 Fed. 287. *United States* v. *Brooklyn Eastern District Terminal,* (U. S. Supreme Court, March 24, 1919).

The court below held that the switching crews of defendant were clearly within the object of the Hours of Service Act, but as that act was limited to "common carriers" the point was too plain to need elaboration that it did not apply to defendant. The Supreme Court finds it too plain to call for much elaboration, that this unanimous conclusion of the Circuit Court of Appeals, First Circuit, is wrong. It does not depend on any nice distinctions of definite or corporate power, or of agency, but "whether Congress, in declaring the Hours of Service Act applicable to any common carrier or carriers, their officers, agents and employees, engaged in the transportation of passengers or property by railroad, made its prohibitions applicable to" defendant. The decision accords with the general principle that the public is not concerned with the agencies employed by a carrier to perform its duties, they are all impressed with the public nature of the carrier, and as to such public duties, the liability is joint and several. No duty or liability should be escaped by dividing the service with other agencies. In addition to the cases cited in the opinion, see such cases as, *Christenson* v. *American Express Company,* 15 Minn. 270 (Express Companies); *Robinson* v. *Southern Railroad Company,* 40 App. Cas. (D. C.) 549, Ann. Cases, 1914 C 959 (Sleeping Car Companies); *C. M. & St. P. Ry. Co.* v. *Minneapolis Civic Association,* 247 U. S. 490 (June, 1918, involving separate charges over terminal tracks).

COMMON CARRIERS—DISCRIMINATION BY GRANTING SPECIAL PRIVILEGES.—Plaintiff bought a railway ticket to a station at which his train did not stop. He brought an action for damages caused by requiring him to change cars so as to take a train stopping at his station. *Held,* that under such circumstances it was the duty of the passenger to stop off and wait for such train. Defendant company could not stop the other train at that station for plaintiff without violating the Federal Statute forbidding granting to any person any privileges in the transportation of persons or property, except such as are specified in the tariff. *May* v. *S. A. L. Ry.* (S. C. 1918), 96 S. E. 482.

The common law rule that charges must be reasonable did not require that they should be equal. *Fitchburg Ry. Co.* v. *Gage,* 12 Gray 393. If the

charge to me is reasonable I cannot complain that the charge to you was less, was the doctrine of the old cases. In *Schofield* v. *L. S. & M. S. Ry.*, 43 Ohio St. 571, the effect of this doctrine in building up the Standard Oil Company and in crushing its competitors, led the court severely to limit the doctrine. It was reviewed in *Cook* v. *C. R. I. & O. Ry.*, 81 Ia. 551, with the conclusion that carriers were not presumed to be in the business of "alms-giving". The only reasonable conclusion is that the less rate was reasonable, and the greater was too much. Judge Landis in *U. S.* v. *C. & A. Ry.*, 148 Fed. 646, took the ground that "no rate can possibly be reasonable that is higher than anybody else has to pay." Meantime statutes were taking the same direction and dealing with discriminating service as well as rates. They were not merely fixing a maximum rate, but were providing that there should be but one rate and one set of privileges for all in the same class. The main object of the acts of 1906 and 1910 was held to be to secure equality of treatment for all. *Adams Express Co.* v. *Crominger*, 226 U. S. 491. A newspaper editor must pay the same cash fare as other passengers, and cannot lawfully ride on a pass paid for by advertising. *McNeil* v. *D. & C. Ry. Co.*, 132 N. C. 510; *C. J. & L. Ry.* v. *U. S.*, 219 U. S. 486. Equally forbidden is the issue of a free pass in settlement of a claim for damages against a railroad. *L. & N. R. Co.* v. *Mattley*, 219 U. S. 467. Nor can a sheriff pay for his rides by his fees in suits in which the railroad was a party. In a recent case his removal from office was justified because he made such an arrangement. *Coco* v. *Oden* (La., 1918), 79 So. 287. An agreement to expedite a shipment is equally within the inhibition. *C. & A. Ry. Co.* v. *Kirby*, 225 U. S. 155; *Clegg* v. *St. Louis, etc. R. Co.*, 203 Fed. 971. See also previous notes, 13 MICH. L. REV. 514, 14 MICH. L. REV. 416. In a recent opinion, Mr. Justice Holmes thinks "the passion for equality sometimes leads to hollow formulas". In *Postal-Tel. Cable Co.* v. *Tonopah & Tide Water R. Co.* (U. S. Sup. Ct., Jan. 20, 1919), he finds contracts for exchange services between telegraph and railroad companies, whether on or off the line, are not within the Act of June 18, 1910, c. 309, Sec. 7, thus reversing the ruling of the Interstate Commerce Commission, and affirming, 241 Fed. 162, 249 Fed. 664.

CRIMINAL LAW—CONSTRUCTIVE INTENT—INVOLUNTARY MANSLAUGHTER.—Defendant sold to deceased "cream soda" containing 38% wood alcohol, which deceased imbibed with fatal effect. The trial court charged, in effect, that if defendant, without knowledge of its poisonous quality, put wood alcohol in the soda with intent to make an intoxicating liquor to sell in violation of the laws of the state, he was guilty of manslaughter, and of this crime the jury found him guilty. *Held*, no error, the sale of intoxicating liquor being "not only *malum in se*, but *malum prohibitum*." *State* v. *Keever*, (N. Car., 1919), 97 S. E. 727.

It is commonly held that, in order that intent to do one act may supply the criminal intent necessary for conviction of doing another and unintended act, it is essential that the act intended be wrongful in itself, not merely prohibited by law. In other words, although no question of moral culpability is involved where one intentionally does a prohibited act (*Reynolds* v. *U. S.*,